



Department of Energy

Field Office, Idaho
785 DOE Place
Idaho Falls, Idaho 83401-1562

March 30, 1992

Betty Hudson, Recorder
Energy Board of Contract Appeals
Department of Energy
Washington, D.C. 20585

Re: Todilto Exploration and Development Corporation
EBCA No. C-9201117

Dear Ms. Hudson:

This letter will confirm our telephone conversation of March 27, 1992 in which we discussed appropriate times for conducting the status conference call that Judge Kimball has requested. I indicated that effective April 1, 1992, jurisdiction of the Grand Junction Project Office will be transferred from the Idaho Field Office to the Albuquerque Field Office and that the requested conference call might be more appropriate after the Albuquerque's Office of Chief Counsel has had an opportunity to review the file and background details.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in cursive script, reading "Mark D. Olsen", is written over the typed name.

Mark D. Olsen, Counsel
Office of Chief Counsel

cc: George Warnock
James A. Stout



Department of Energy
Grand Junction Projects Office
Post Office Box 2567
Grand Junction, Colorado 81502-2567

February 25, 1992

Certified No. 25483

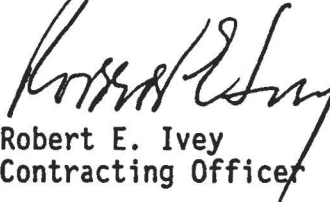
Energy Board of Contract Appeals
4040 North Fairfax Drive, Room 1006
Arlington, VA 22203

SUBJECT: EBCA No. C-9201117

Gentlemen:

In response to the January 31, 1992 docket notice, enclosed are two copies of the Appeal File prepared in accordance with 10 CFR Part 703.104. A third copy has been forwarded to the Appellant, Mr. George Warnock of Todilto Exploration and Development Corporation.

Sincerely,



Robert E. Ivey
Contracting Officer

Enclosure

cc: G. Warnock, Todilto, w/enc.
M. Olsen, DOE-ID, MS-1209, w/enc.
W. Maez, DOE-AL, w/enc.
J. Lyle, DOE-ID, MS-1115, w/o enc.

RECEIVED

FEB 27 1992

OFFICE OF THE CHIEF COUNSEL



Department of Energy
Washington, DC 20585

January 31, 1992

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FEB. 4 1992

Mr. G. Warnock
President
Todilto Exploration and
Development Corporation
311 Washington SE
Albuquerque, NM 87108

OFFICE OF THE CHIEF COUNSEL

✓ Chief Counsel
Idaho Operations Office, DOE
785 DOE Place
Idaho Falls, ID 83402

Mr. Robert E. Ivey
Contracting Officer
Grand Junction Projects Office, DOE
P. O. Box 2567
Grand Junction, CO 81502-2567

Re: Todilto Exploration and Development Corporation
Mining Lease AT(05-1)-ML-60.8-NM-B-1

Dear Parties:

This is to advise that the above-referenced appeal has been received and docketed as of January 27, 1992, and is identified as EBCA No. C-9201117.

A copy of 10 CFR 703, as well as the Board's 1985 Guide to Practice, and a Notice Regarding Alternative Methods of Dispute Resolution are enclosed for your information.

Formal notices of appearance for each party shall be promptly filed with the Board (§ 703.126 and § 703.127). The Board is to be notified immediately of changes in any party's mailing address, telephone number and/or representation.

The Contracting Officer shall submit to the Board two copies of an Appeal File within 30 days after receipt hereof, with an additional copy to Appellant (§ 703.104)

Appellant shall file a Complaint within 30 days of receipt hereof in accordance with § 703.106.

All pleadings, briefs or other papers filed with the Board shall be in triplicate, with an additional copy to the opposing party.

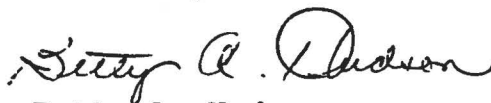
FAX
 Except for the filing of Notices of Appeal and Motions for Reconsideration, the Board authorizes parties to file documents of 30 pages or less by facsimile transmission. Filings of more than 30 pages must be approved by the Recorder. Facsimile filings are effective upon actual receipt by the Board, and become part of the official record. Only one copy of a facsimile filing need be transmitted. The Board's facsimile number is 703/235-3566.

The parties are encouraged to establish early contact for the purpose of negotiation and possible settlement.

In order to expedite receipt of the parties' documents, please send all material to:

Energy Board of Contract Appeals
 4040 North Fairfax Drive, Room 1006
 Arlington, VA 22203

Sincerely,



Betty A. Hudson
 Recorder

2 Enclosures

cc:
 Assistant General Counsel
 for Procurement and Finance
 U. S. Department of Energy
 1000 Independence Avenue, S.W.
 Washington, DC 20585

U.S. Department of Energy
Idaho Field Office

I N T E R O F F I C E M E M O R A N D U M

Date: 28-Jan-1992 06:55am MST
From: MARK OLSEN
MOLSEN
Dept: IDAHO FIELD OFFICE
Tel No:

TO: ROBERT IVEY (RIVEY)
CC: RALPH THROCKMORTON (THROCKMORTON@A1@DOESYS)
CC: SIMON MARTIN (SMARTIN)
Subject: Warnock's appeal

Bob,

Yesterday in our conversation about Warnock's notice of appeal, you asked what we need to do now. I suspect you are already aware of this but for the record let me specify the first several steps we ("we" is a little bit of an overstatement since you will be doing the bulk of the work) must do:

1. 10 CFR section 703.103 provides:

When a notice of appeal has been received by the contracting officer [see 703.101], he shall, within 10 days, endorse thereon the date of mailing (or date of receipt, if otherwise conveyed) and shall forward said notice of appeal to the Board. In so notifying the Board, the contracting officer shall include the following information: [see section 703.103 for the types of information the Board requires]

2. Section 703.104 requires you, as the contracting officer, to assemble essentially what is now referred to under Part 1023 (rules for disputes covered by the Contract Disputes Act) as the "Rule 4" file. See the specific types of documents you need to gather and send to both the Board and to Warnock.

3. After the "Rule 4" file is lodged with the Board, the pleading stage will begin. I think where the lease very clearly calls for a minimum annual royalty and where the undisputed facts reveal that he has not either paid the royalty or applied, on an annual basis (as required by the lease), for a waiver of the minimum annual royalty, a motion for summary judgment would be appropriate. However, since Warnock is a pro se appellant (i.e. not represented by an attorney) and based on my last pro se case before the board (the supervising judge bent over backwards for the guy; at times, I felt like the judge was not only acting as the judge, but also as attorney for the appellant), DOE should probably make some discovery requests and allow Warnock every opportunity to present his case before a motion for summary judgement is filed.